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In the United States
Circuit Court of Appeals
For the Ninth Judicial Circuit

PUGET SOUND NAVIGATION COMPANY,
a corporation,
Appellant,

vs.

CANYON LUMBER COMPANY, PORT BLAKE-
LY MILL COMPANY, and GUS SMITH
and CECELIA SMITH,
Appellees.

UPON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

BRIEF OF APPELLEES.

H. H. A. HASTINGS,
LIVINGSTON B. STEDMAN,
*Proctors for Appellees Canyon
Lumber Company and Port
Blakely Mill Company.*

ROY L. CADWALLADER,
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Office and Post Office Address, 64 Haller Building, Seattle, Washington

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STATEMENT OF THE CASE.

The statement of the case given by the proctors for appellant is in the most part accurate, but naturally colored from appellant's viewpoint.

The statement contained on page 6, however, to the effect that the "Indianapolis" was not going at

full speed is in conflict with the Master's own testimony. (Apos. pp. 37 and 38.) From the viewpoint of the appellees, we will briefly submit the following statement of the case.

The "Klickitat" was proceeding from Port Blakely to Seattle with the scow "Dorothy D" and two floats in tow. (Apos. p. 9.) The weather was clear (9). The tow line was 300 feet long (18). The tug passed out of Port Blakely Harbor leaving the Blakely Rocks to the starboard or to the south (9), and took a course for Pier 2 in Seattle. At Duwamish Head (Luna Park), the tug and tow were about half way between the bell-buoy and Luna Park (10), in order to avoid steamers entering and leaving Seattle Harbor, such steamers generally going outside or north of the bell-buoy (10). When the tug was abreast the bell-buoy, a fog bank settled down, and the tug gave, at thirty-second intervals or more frequently, fog signals of one long and two short blasts, signifying that the boat was coming with a tow (10). After passing the bell-buoy sometime, the Master of the tug heard a small whistle ahead, blowing fog signals (10), and he saw the "Indianapolis" 300 or 400 feet ahead (11). The "Indianapolis" blew two blasts of her whistle, indicating a starboard passing, and the tug immediately answered with two whistles, having, just before hearing the "Indianapolis'" passing whistles, given the fog towing whistle (11). In a few seconds, the "Indianapolis" passed the tug seemingly at full speed, very close (11). The Master of the "Indian-

apolis" admitted he was going at full speed before he saw the tug (37-38). The "Indianapolis" cut across the tow-line of the "Klickitat" about 200 feet astern the tug, striking the scow six feet from the port forward corner and cutting a wedge-shaped slice 72 feet long (12, 54). The "Indianapolis" went right on after finding that she was not hurt, without attempting to ascertain the damage done excepting to herself. (Testimony of Master of tug, Apos. 11 and 12; testimony of Master of "Indianapolis," Apos. 44 and 45.) After the "Indianapolis" gave the starboard passing signal, she reversed her engines and passed to port (41). The mate of the "Indianapolis" was on the pilot-house deck on the port side, and the look-out was on the same deck on the starboard side, according to the Master's testimony (39). According to the mate's testimony, he, the mate, was on the starboard side of the pilot-house (45). The mate heard the tug signal only once, a minute before he saw the tug (46), and when he saw the tug, it was only ten or twenty feet away from the "Indianapolis" (47), and he immediately reported the scow was in tow of the tug (47 and 48). The look-out first saw the tug when it was half past on the starboard bow (53). He heard the whistle of the tug one or two minutes before he saw the tug, but did not report it, thinking that the signal was heard as readily by the Master and the mate (53). The Master of the "Indianapolis" did not give the backing signal to the engine room until a minute after the stop signal (56-57). The tug

was seen by those on the "Indianapolis" to be on the starboard bow of the "Indianapolis" (41, 46, 54).

ARGUMENT.

The only contention on the part of the appellant is that the "Klickitat" was at fault as well as the "Indianapolis" in not obeying Article 16 of the International Collision Rules, which are the same as the Inland Rules, and is as follows :

"SPEED OF SHIPS TO BE MODERATE IN FOG, AND SO FORTH.

"ART. 16. Every vessel shall, in a fog, mist, falling snow, or heavy rainstorms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

"A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over."

26 Stat. at L. 326.

2 Fed. Stat. Annot. 160.

While the "Indianapolis" frankly admits her fault, it would seem that there is no virtue in such admission, as it is clearly shown that she was grossly at fault.

The Sagamore, 247 Fed. 743.

The Thielbek, 241 Fed. 209.

The "Indianapolis" was guilty of gross negli-

gence in reversing after giving the towing signal.

The Thielbek, 241 Fed. 216.

The tug with the tow was the privileged vessel and it was the duty of the "Indianapolis" to keep out of her way.

The Thielbek, 241 Fed. 209, at 215.

11 Corpus Juris, 1078.

The tug, being on the starboard bow of the "Indianapolis" and so appearing to those in charge of the navigation of the "Indianapolis," they were bound to keep out of the way of the tug in tow.

Article 19, International Rules:

"When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other."

26 Stat. at L. 327.

2 Fed. Stat. Annot. 162 and page 180 (Inland Rule same as International).

It was the duty of the tug and tow to keep her course and speed.

International Rule 21, 26 Stat. at L., page 327.

Inland Rule 21, 2 Fed. Stat. Annot., page 180.

Stress was laid, at the trial, upon the fact that the length of the tow-line was 300 feet, but the length of the tow-line is no ground for imputing blame to the tug.

The Jumna, 140 Fed. 743, at 747.

The learned trial judge felt that Rule 16 did not apply to the situation in which the tug found itself, upon the ground that the "circumstances of the

ease" did not admit of the "Klickitat's" stopping, and having the scow in tow overhaul her in mid-stream.

Going at a rate of speed hardly faster than a walk, less than four miles an hour, it cannot be said that the tug was proceeding at an immoderate rate of speed where she had a vision of 400 feet. After receiving a starboard passing signal, the tug would not be expected to have the "Indianapolis" make a port passing or such a passing as would endanger her tow.

The Master of the "Indianapolis" states that in foggy weather, it was his custom to back away from Colman Dock until the pierhead was out of sight, and that on this morning he backed about 120 feet (42). He proceeded to make a wide spring to the south, swinging to starboard and proceeding as far south as Pier D, five piers to the south of the Colman Dock, so that when he was on his course to pass outside the bell-buoy he was on a course crossing that of the "Klickitat" and that of her tow. It was certainly gross negligence for the "Indianapolis," when the weather was so thick that the Master could only see 120 feet, to proceed at full speed across the course of vessels entering the harbor, and it is as clear as can be demonstrated, as found by the learned trial judge, that the collision was entirely and solely due to the gross negligence on the part of the "Indianapolis" and her Master and crew. In fact, the appellant admits that it was at fault, but seeks to hold the "Klickitat" for a division of dam-

ages because it did not technically comply with Rule 16 when the "circumstances of the case" would have brought on disaster if the "Klickitat" had stopped.

We, therefore, respectfully submit that the decree of the Honorable District Court for the Western District of Washington, Northern Division, should be, in all respects, affirmed.

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